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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-217319 **DATE:** March 22, 1985
MATTER OF: Parkey & Partners Architects

DIGEST:

Contracting agency has broad discretion to determine when it is appropriate to cancel a procurement conducted under Brooks Act procedures and may do so by establishing a reasonable basis for the cancellation. Where the scope of the initial procurement changed significantly after the evaluation and selection of a prospective contractor and where the wrong small business size standard was used in the initial solicitation for set-aside purposes, cancellation and resolicitation were reasonably based.

Parkey & Partners Architects (Parkey) protests the cancellation and resolicitation of project No. ITX81003 by the General Services Administration (GSA). The project encompasses architectural and engineering (A-E) services in connection with conversion and modernization work at the United States Post Office-Terminal Annex, in Dallas, Texas. We deny the protest.

In accordance with procedures prescribed in the Brooks Act for the procurement of professional A-E services,^{1/} the GSA published a notice in the Commerce Business Daily (CBD) on November 15, 1982, which provided in part as follows:

^{1/} See 41 U.S.C. § 541 et seq. (1982). The Brooks Act requires federal agencies to select contractors on the basis of demonstrated competence and qualifications; the procedures do not include price competition. Once a firm is selected as the most highly qualified to provide the services, the agency is required to negotiate a contract at a fair and reasonable level of compensation. For further discussion see Work System Design, Inc., B-213451, Aug. 27, 1984, 84-2 C.P.D. ¶ 226, and Howard R. Lane, FAIA Assoc., B-213932, Aug. 2, 1984, 84-2 C.P.D. ¶ 146.

". . . Work includes, but is not limited to, site surveys, converting post office work room space to office space, roof replacement, installation of two new floors in existing light well, new air conditioning and lighting system, plumbing and piping replacement, replacement of one freight and two passenger elevators. Services include preparing plans, specs and cost est. for construction of the building conversion and modernization (approximately 249,800 sq. ft. gross area). Est. cost \$7,000,000 to \$8,000,000. . . ."

The CBD notice also indicated that the procurement was a total set-aside for small business concerns having average annual receipts for the preceding 3 fiscal years not exceeding \$2 million.

Thirteen firms responded to the CBD notice. After evaluation of the qualifications and performance data submitted by these firms, discussions were held with the five highest ranked firms. Dahl, Braden, Chapman, Inc. (Dahl), was chosen as the most highly qualified firm, but was eliminated as ineligible for award when the Small Business Administration ruled on February 14, 1983, that Dahl was not a small business concern under the \$2 million size standard.

GSA began negotiations with Parkey, the second ranked firm, in February 1983, but as of mid-November 1983, agreement had not been reached with Parkey on the detailed scope of work for its contract. At the same time, the contracting officer was notified by GSA's Central Office in Washington, D.C., that numerous changes would be made in the project scope of work. Accordingly, the contracting officer suspended negotiations with Parkey until the changes to the scope of work were put into final form.

The changes finally incorporated into the project scope of work included (1) high-technology building features such as raised flooring, high efficiency mechanical and electrical enhancements, digital controls and fully integrated fire safety, security, and energy management controls combined within a total building automation system, (2) a new telecommunications system and (3) a new computer facility to occupy one full floor. The estimated construction cost was revised from \$7 - \$8 million to \$11 - \$14 million.

Negotiations with Parkey were resumed in March 1984 and completed at the regional level in September 1984. However, GSA's Office of Acquisition Policy did not approve the proposed award to Parkey, recommending instead that the procurement be canceled and that the A-E services be resolicited under a revised CBD announcement that covered the modified project requirements. GSA reports that this recommendation was based on the determination that there were significant changes in the scope of work for the A-E services resulting from the modified project requirements and because the small business size standard used in the original CBD notice had unnecessarily restricted competition because the services should have been classified as primarily engineering which would have permitted consideration of proposals from offerors within the annual receipts size standard of \$7.5 million rather than \$2 million.

In accordance with the Office of Acquisition Policy's recommendation, the contracting officer resolicited for the A-E services under a revised CBD notice published December 10, 1984, which stated in pertinent part as follows:

" . . . Revised project provides for the conversion and renovation of Post Office work room to office space, roof replacement, two new floors in existing light well, new air conditioning and lighting systems, plumbing and piping replacement, replacement of one freight and two passenger elevators, building technology features through use of raised floors or other building elements; new computer facility to occupy one full floor, new telecommunications systems (telephone, signal) for total building. Services may include surveys, studies, designs, plans, specs, estimates, shop drawings and materials approval, construction inspection/observation, post occupancy review. The est. construction cost of the project (250,000 gross sq. ft. area) is \$11-\$14 million." (Emphasis added:)

The CBD notice also indicated that the revised procurement was set aside for small businesses having annual receipts for the preceding 3 fiscal years of not more than \$7.5 million.

Parkey protests that GSA was fully aware of the small business size status question during the 2-1/2 years that negotiations were taking place and thus any review of the

size issue should have been conducted before Parkey was allowed to spend more than \$35,000 to establish firmly the scope of services required and to consummate its contract. Moreover, Parkey contends that the costs estimated for the changes to the scope of services have been unnecessarily inflated. Parkey argues that:

"the scope changes related to the high tech designation should not be considered part of the cost of construction as these are, more correctly, Furniture, Fixtures and Equipment, not general construction or renovation [and] the computer installation and telecommunications system . . . must each be bid as separate contracts to insure price competition and user compatibility."

Thus, in Parkey's estimation, the total cost of construction is more correctly stated at \$9,412,000, or \$1,412,000 above the \$8,000,000 upper estimate in the original solicitation. Parkey concludes that this increase does not significantly change the scope of the work to be done and does not justify cancellation and resolicitation.

We have held that in negotiated procurements, where there is no public bid opening and exposure of prices, the agency need only a reasonable basis for amending or canceling a request for proposals after receipt of proposals. Pacer Systems, Inc., B-215999, Dec. 10, 1984, 84-2 C.P.D. ¶ 645. While we have recognized that Brooks Act procedures are fundamentally different from traditional procurement procedures, we have held that under these procedures agencies should be afforded the same discretion to cancel as in other types of procurements. Howard R. Lane, FAIA Assoc., B-213932, supra. Thus, as we concluded in Lane, we can conceive of no harm to the procurement system or to competing firms in allowing Brooks Act procurements to be canceled when the agency establishes a reasonable basis therefor.

We find that the scope of the procurement has changed significantly since the evaluation and selection of Parkey under the initial solicitation, and therefore, GSA had a reasonable basis for the cancellation. First, the project scope of work was expanded to include high-technology building features, a telecommunications system, and a computer facility, thus altering the nature of the A-E design services required. This resulted in an increase in GSA's

estimate of construction cost from \$7 - \$8 million to \$11 - \$14 million. While Parkey disputes GSA's upward revision of its cost estimate, Parkey's own computations indicate that the cost estimate should have been increased by more than \$1.4 million. In our opinion, even if we use Parkey's rather than GSA's figures, the increase in the estimate is so large for a project of this size, that the increase represents an additional indication that there was a significant change in the scope of the work to be performed. Moreover, because the changes were made after negotiations had been initiated with Parkey, the other most highly qualified A-E firms were not afforded an opportunity to be evaluated on the basis of the revised project design requirements. See Howard R. Lane, FAIA Assoc., B-213932, supra. Second, GSA asserts that since the competitive A-E selection process was unnecessarily restricted due to the use of the wrong size status in the original CBD notice, it is uncertain that Parkey would have been selected if the higher \$7.5 million size standard had been used. However, because the \$2 million size standard in the initial CBD notice was not timely appealed the standard was final with respect to that solicitation and the contracting officer could not ignore it. Empire Moving and Storage Co., B-210139, May 20, 1983, 83-1 C.P.D. ¶ 543. Nevertheless, the use of an erroneous size standard is a factor which properly may be considered by the contracting officer in deciding whether to cancel a solicitation. In fact, the use of an erroneous size standard alone may constitute a reasonable basis for canceling a solicitation even where no party timely appealed the incorrect size standard. Pacer Systems, Inc., B-215999, supra, citing Empire Moving and Storage Co., B-210139, supra.

Accordingly, in view of the changes in the scope of the procurement and the use of an incorrect size standard in the initial solicitation, we believe GSA had a reasonable basis for the cancellation and resolicitation.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel